IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4102 of 1996

with

CRIMINAL MISC.APPLICATION No 600 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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NAGARJIBHAI K NAYAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4102 of 1996
   MR BS PATEL for Petitioner No. 1 (absent)
   PUBLIC PROSECUTOR for Respondent No. 1
   NOTICE SERVED for Respondent No. 2
2. Criminal Misc.Application No. 600 of 1996
   MR BS PATEL for Petitioner No. 1(absent)
   PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 03/07/2001

ORAL JUDGEMENT

#. These matters have been placed at Sr. No.2 of urgent final hearing. As per endorsement made on the cause list they are placed today for 48th time. When the matters were called out at 11.30 a.m. a request was made by learned Shri A.I.Pathan for Shri B.S.Patel for the applicant-accused that Shri Patel has filed sick note therefore the matter may be adjourned.

#. The aforesaid request of Mr.Pathan was rejected because firstly sick note does not count in criminal matters and secondly these matters are of 1996 wherein interim relief is granted, whereby further proceedings in criminal case filed before the trial court against the applicant-accused in both these matters are stayed.

#. From the order sheet of Misc. Criminal Application No.4102 of 1996 it appears that when these matters were placed before my learned Brother H.H.Mehta, J. on 24.4.2001 at the fag end of the day Shri B.S.Patel, learned advocate sought time and accordingly it was adjourned to 21.6.2001 i.e. after summer vacation. However, due to some or other reason it was not placed on 21.6.2001 and today i.e. on 3.7.2001 it is placed for final hearing.

#. Under the aforesaid circumstances, request was made by Shri Pathan for Shri Patel for the petitioner-accused to adjourn both these matters were refused and Shri Pathan was requested to proceed with the case. But he expressed his inability to go on with the matters, as per the instructions received by him from his senior advocate Shri B.S.Patel.

#. At this stage, request was made by Shri Pathan to keep these matters at 2.15 p.m. When asked Mr.Pathan stated that he would like to call other colleague of him. Such unusual request cannot be granted. Therefore, this request is also rejected.

#. Misc. Criminal Application No.600 of 1992 is filed by the petitioner-accused for quashing the proceedings of Criminal Case No.1194 of 1992, which is filed by the being Misc. Criminal application No.2 against the petitioner-accused before the court of JMFC., Gandevi for the offences under Section 147(i) of the Gujarat Cooperative Societies Act, 1961 and Section 175 of IPC.

#. The impugned complaint was filed on 9.10.1992 before the court of JMFC., Gandevi. From the averments made in para 3 of the application it is clear that the evidence before the trial court was already over. However, it seems that on rejection of one application by the learned Magistrate, the petitioner filed Criminal Revision Application No.14/96 before this court. It is also stated in para 3 that at that time he was advised to approach this court by filing petition under Section 482 of Criminal Procedure Code and accordingly he has filed this petition under Section 482 of Criminal Procedure Code as cognizance was taken by the learned Magistrate beyond period of limitation.

#. It is true that there is no period of limitation prescribed for filing the application under Section 482 of the Criminal Procedure Code but that does not mean that one can file petition under Article 482 at any time. It has to be filed within a reasonable time and not after lapse of almost a period of 4 years. Reasonable period depends upon the facts of each case. In this case it cannot be said that it was filed within a reasonable time. Therefore, only on this ground this petition is required to be dismissed.

#. I am also of the considered opinion that when the evidence is already over in complaint filed before the Trial Court then, this court should not ordinarily exercise its jurisdiction under Section 482 of the Criminal Procedure Code. Unless and until it is pointed out that allowing such proceedings before the Trial Court even after recording of evidence would cause failure of justice or grave prejudice to the accused. Therefore, on the peculiar facts and circumstances of the case, I am not inclined to exercise my jurisdiction under Section 482 of the Criminal Procedure Code on this ground also.

##. From the averments made in the application it is clear that the main contention of the petitioner-accused is that the complaint is time barred therefore, the learned Magistrate ought not to have taken congnizance. Such objection should have been raised before the learned Magistrate at the earliest point of time . Even if such objection is raised and it is rejected then also this court would not entertain with such orders because though complaint may have been barred by period of limitation it was not filed within time limit but the Trial Court has always powers under section 473 of Criminal Procedure Code to take cognizance even after the expiry of period of limitation if it is satisfied that on the facts and circumstances of the case the delay was properly

explained or if the trial court is satisfied that it is necessary to do so in the interest of justice. Thus, even if the delay was not explained the trial court would be competent in taking cognizance if it is satisfied that it is necessary to do so in the interest of justice. Having bare look at the averments made in the complaint it goes without saying that in such type of cases the court should take congnizance after exercise its power under Section 473 of Criminal Procedure Code even if the complaint was filed time barred.

##. In view of the above discussion, the Misc. Criminal Application No.600 of 1996 is required to be dismissed.

##. I have gone through the Misc. Criminal Application No.4102 of 1996 filed by the petitioner-accused wherein Criminal Complaint dated 20.10.1993 filed by the complainant-respondent No.2 which was registered as Criminal Complaint No.2366 of 1993 filed against the accused under Section 175 of IPC before the court of JMFC., Gandevi is challenged on the grounds mentioned in the memo of application.

##. In ground G at page C of this application it has been stated that District Registrar also lodged complaint being Criminal Case No.1194 of 1992 against the petitioner for the audit against which he filed Misc. Criminal Application No.600 of 1996 before this court for quashing the same, which is admitted and further proceedings are stayed.

##. As stated earlier, the aforesaid petition is dismissed. Therefore, this point is not available to the petitioner. Having bare look at the averments made in the impugned Complaint No.2366 of 1993 it cannot be said that no offence is made out. In such type of cases when the application is filed under Section 482 of the Criminal Procedure Code after a period of nearly 3 years then this court would not like to exercise its jurisdiction more particularly, when main petition being Misc. Criminal Application No.600 of 1996 is already dismissed.

In view of the above discussion, both these applications are dismissed. Rule discharged. Interim relief, if any, granted earlier stands vacated forthwith. The office to send the copy of the writ in both these matters to the trial court forthwith. The Trial Court is directed to proceed further with the cases and decide the same in accordance with law as early as possible because the complaints are old one of 1992 and 1993 respectively.

(B.J.Shethna, J.)

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